

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PETER ERIKSEN, a single man,)	
)	NO. CV-03-0126-LRS
Plaintiff,)	
-vs-)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR RELIEF FROM
CHELAN COUNTY, a municipal)	JUDGMENT
corporation; GRANT COUNTY, a)	
municipal corporation; HANSEN)	
LAW FIRM; HANSEN AND MIDDLETON)	
PLLC; TOM MIDDLETON; AGENTS 1-)	
12,)	
)	
Defendants.)	

Pending before the court is Plaintiff's Motion For Order to Vacate Dismissal (Ct. Rec. 72), filed August 8, 2005. Plaintiff, additionally demands oral argument on October 20, 2005 at 2:30 p.m. Plaintiff asks the court for an order vacating the order¹ and Judgment entered on August 6, 2004.

DISCUSSION

¹The order granted Grant County's motion for partial summary judgment, granted Hansen Law Firm, Hansen and Middleton PLLC, and Tom Middleton's motion for summary judgment, and denied plaintiff's motion to continue, and plaintiff's motion to exclude evidence (Ct. Rec. 57, filed August 6, 2004).

1 The court construes plaintiff's motion as a motion for relief of
2 judgment or order pursuant to Federal Rules of Civil Procedure Rule
3 60(b). Rule 60 (b) reads, in pertinent part:

4 Rule 60. Relief From Judgment or Order

5 (b) Mistakes; Inadvertence; Excusable Neglect; Newly
6 Discovered Evidence; Fraud, Etc. On motion and upon
7 such terms as are just, the court may relieve a party
8 or a party's legal representative from a final
9 judgment, order, or proceeding for the following
10 reasons: (1) mistake, inadvertence, surprise, or
11 excusable neglect; (2) newly discovered evidence which
12 by due diligence could not have been discovered in time
13 to move for a new trial under Rule 59(b); (3) fraud
14 (whether heretofore denominated intrinsic or
15 extrinsic), misrepresentation, or other misconduct of
16 an adverse party; (4) the judgment is void; (5) the
17 judgment has been satisfied, released, or discharged,
18 or a prior judgment upon which it is based has been
19 reversed or otherwise vacated, or it is no longer
20 equitable that the judgment should have prospective
21 application; or (6) any other reason justifying relief
22 from the operation of the judgment. The motion shall be
23 made within a reasonable time, and for reasons (1),
24 (2), and (3) not more than one year after the judgment,
25 order, or proceeding was entered or taken. A motion
26 under this subdivision (b) does not affect the finality
27 of a judgment or suspend its operation. This rule does
28 not limit the power of a court to entertain an
independent action to relieve a party from a judgment,
order, or proceeding, or to grant relief to a defendant
not actually personally notified as provided in Title
28, U.S.C., § 1655, or to set aside a judgment for
fraud upon the court. Writs of coram nobis, coram
vobis, audita querela, and bills of review and bills in
the nature of a bill of review, are abolished, and the
procedure for obtaining any relief from a judgment
shall be by motion as prescribed in these rules or by
an independent action.

22 Plaintiff argues that there are genuine issues of material facts which
23 were erroneously decided on summary judgment without a jury. Ct. Rec.
24 73.

25 The court issued an Order Denying Plaintiff's Motion for
26 Reconsideration on October 5, 2004 (Ct. Rec. 71). Pursuant to the
27
28

1 Federal Rules of Civil Procedure, Rule 60(b), plaintiff was required to
2 file this motion by August 6, 2005, to be considered timely.

3 As a threshold condition to any relief under the Rule, Plaintiff must
4 assume the burden of showing a meritorious defense or claim. *Compton v.*
5 *Alton Steamship Co.*, 608 F.2d 96, 102 (4th Cir.1979) (citations omitted).
6 Here, the Court entered judgment against Plaintiff because he failed to
7 prove that any official policy or custom was the source of the alleged
8 constitutional violation. Further, pursuant to 28 U.S.C. §1367(c)(3),
9 the court declined to exercise supplemental jurisdiction over Plaintiff's
10 state law claims. As such, Plaintiff's state law claims were dismissed
11 without prejudice in Ct. Rec. 57.

12 The court on October 5, 2004, denied Plaintiff's motion for
13 reconsideration in Ct. Rec. 71, based on Plaintiff's failure to
14 successfully argue that there had been a change of controlling law, or
15 that new evidence was available.

16 In the current motion under Rule 60(b), Plaintiff has not demonstrated
17 any errors in the previous ruling(s) nor has he raised any other reason
18 justifying relief from the operation of the judgment. Plaintiff states
19 that the court decided many genuine issues of material facts, which facts
20 were allegedly not true, and should have been presented to a jury in
21 violation of Plaintiff's due process rights. Ct. Rec. 73, at 1.

22 Rule 60(b) provides for extraordinary relief and is only to be invoked
23 upon a showing of exceptional circumstances. *Ackermann v. United States*,
24 340 U.S. 193, 199-201, 71 S.Ct. 209, 212-13, 95 L.Ed. 207 (1950); *Boyd*
25 *v. Bulala*, 905 F.2d 764, 769 (4th Cir.1990). Plaintiff's arguments do
26 not rise to a showing of "exceptional circumstances" and appear to be
27 arguments that could have been raised earlier.

